

1                   **LAW OFFICES OF  
2 NASH & KIRCHNER, P.C.**

3                   P.O. BOX 2310  
4 TUCSON, ARIZONA 85702  
5 Telephone (520) 792-1613  
6 Fax (520) 628-1079  
7 Pima County Computer No. 41636  
8 State Bar No. 002893  
9 walter.nash@azbar.org  
10 bkirchner@azbar.org

11 Attorney for defendant David Reid

12                   IN THE UNITED STATES DISTRICT COURT

13                   FOR THE DISTRICT OF NEW MEXICO

14                   UNITED STATES OF AMERICA,

15                   Plaintiff,

16                   CR-05-1849 JH

17                   vs.

18                   DAVID REID,

19                   Defendant.

20                   SENTENCING MEMORANDUM

21                   The Defendant David Reid, by counsel undersigned, hereby submits  
this Memorandum concerning his sentencing.

22                   Mr. Reid is before the Court on his plea of guilty to misdemeanor  
23 offense of failing to file an appropriate financial form following cash or cash  
24 equivalent payments to him of more than \$10,000. The agreement  
25 provides for a binding, stipulated sentence of probation together with a

1       \$25,000.00 fine.<sup>1</sup>

2                  The Court is respectfully urged to accept the plea in this case and to  
3 impose probation. There are a variety of factors in David's background and  
4 in this case, all of which militate in favor of the agreed-upon disposition.  
5 The agreed-upon disposition is a product of extensive discussions between  
6 defense counsel and counsel for the Government. The Government was  
7 intimately familiar with David's background and his real involvement in this  
8 case.

9                  Grounds may exist for an objection to the Guideline calculation, but  
10 none is made in this case because it would not result in any change in the  
11 applicable Guideline range of 0 to 6 months. Mr. Reid entered a guilty plea  
12 to failing to file the appropriate report for two \$5,000.00 cash payments for  
13 the same transaction. The Presentence Report ("PSIR") predicates the  
14 base offense level upon the total amount that David was allegedly paid for  
15 his flying services herein. However, there is no showing that other  
16 payments in excess of \$10,000.00 for a *single* transaction were made and  
17 did not result in the filing of a form. The simple fact that a gross amount  
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19                  <sup>1</sup> The defense has agreed that the Government will keep \$8,500.00  
20 taken from Mr. Reid at the time of his arrest, which such amount would be  
21 credited against the \$25,000.00 fine.

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1 was paid to David for a number different episodes of services rendered  
2 does not necessarily mean that a form is required for all of those  
3 transactions. However, even if that objection was litigated and granted, we  
4 would still be left with a Guideline sentencing range of 0 to 6 months.  
5 Accordingly the matter is not discussed further herein.

6  
7 The stipulated range sentence herein falls within the Guideline range  
8 found in the PSIR. Thus, the Court need not consider various grounds for  
9 departures or for a variant sentence. However, there are a number of  
10 factors in David's background and in his performance in this case since his  
11 arrest which militate in favor of the stipulated disposition and which could  
12 arguably constitute grounds for departure or a variant sentence if one was  
13 needed.

14  
15 Initially, counsel undersigned wanted to briefly address a matter that  
16 is not really relevant to this sentencing, but which appears in the Report.  
17 The Jarvis organization was involved in extensive drug trafficking. The  
18 Government's case against Mr. Reid was admittedly circumstantial and  
19 was defensible in a number of ways. The plea ultimately agreed to does  
20 not involve drug-related conduct and, as such, counsel undersigned will not  
21 waste the Court's time in going through various drug-related allegations in  
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1 the PSIR. Suffice it to say that the Government, after years of involvement  
2 with the facts of this case and knowing David Reid very well, would not  
3 have made this plea agreement if it did not believe that the facts of the  
4 case and his background called for it.

6           David came into this case with an absolutely exemplary record. He is  
7 55 years of age and has had ample time during the course of his life to  
8 demonstrate any untoward conduct. He has no felony arrests and but a  
9 single misdemeanor citation almost 20 years ago (almost immediately  
10 dismissed) which stems from a claim by his then-17 year old daughter that  
11 he had pushed her. One day after she made that report, she admitted to  
12 the police that she had lied to them and a dismissal followed.  
13

15           David does not now have nor has he ever had, any alcohol or drug  
16 related problems. Extensive supervision by Pretrial Services did not reflect  
17 any such issues. His employment as a pilot has often involved random  
18 uranalyses, which has confirmed that fact.  
19

20           David has an exemplary personal background. He is but one  
21 semester short of a Bachelor of Science degree in Physics. He was raised  
22 a Quaker and practiced that faith for many years until his conversion to The  
23 Church of Jesus Christ of Latter Day Saints almost eight years ago.  
24

1           David has been consistently employed whenever possible throughout  
2 his adult life. His worked as a truck driver and as a controller and a pilot for  
3 large metal fabrication facility in Pinal County, Arizona. He has also  
4 worked as a network engineer in the computer field both full-time and part-  
5 time.

7           The real passion of David's life has been flying. He has been a  
8 licensed pilot for almost 30 years. He holds a variety of high level ratings.  
9 He has been employed on both a part-time and full-time basis as a charter,  
10 corporate, and forestry pilot.

12           David has more recently found a life partner and has been residing in  
13 Texas with the woman that he plans to marry. He is employed out of the  
14 state of Louisiana as a corporate pilot, but makes his principal residence in  
15 Texas.

17           David's performance since his arrest in August of 2005 has been  
18 exemplary. He was released initially on very onerous conditions which  
19 were rapidly relaxed until Pretrial Services felt his performance had been  
20 so good for so long that they terminated supervision altogether.

22           The bottom line is that for almost five full years David Reid has been  
23 on the equivalent of probation. He has never put a foot wrong. David's  
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1 indictment in this case has already caused significant collateral punishment  
2 to him. He has also suffered a number of other adverse personal, family  
3 and financial consequences since August of 2005. His mother was  
4 diagnosed with cancer and David spent a great deal of time caring for her  
5 in the State of Oregon. She passed away last year. David was unable to  
6 fly following his release due to travel restrictions and was unable to make  
7 payments on an aircraft in which he had invested money. The aircraft was  
8 returned to the lien holder and David lost all of his equity. David had also  
9 been purchasing a home in Casa Grande, Arizona, but his inability to work  
10 in the months following his arrest caused him to be unable to make  
11 payments and the house to go into foreclosure. The foreclosure was  
12 ultimately resolved after a great deal of time and was the subject of a short  
13 sale. David lost all of his accumulated equity.

14         The State of Oregon has filed a civil action against David stemming  
15 from a claim for some of the Medicare and Medicaid benefits paid to his  
16 mother. They are seeking \$84,000.00 from him. David obtained work  
17 renovating a hotel in Taos, New Mexico, but the developer ended up in  
18 bankruptcy leaving David with a discharged claim of more than  
19 \$100,000.00 in unpaid bills and expenses.

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1       Although David has a good job at the present time, he has previously  
2 lost three separate flying jobs in both Arizona and California due to the  
3 businesses falling victim to the economic downturn.  
4

5       The State of Arizona is presently auditing his tax returns claiming that  
6 he owes back taxes. Although that audit was initiated shortly after his  
7 arrest in this case, it does not appear to be involving any claim of  
8 unreported income related to this case. In fact, David reported all of the  
9 income he made flying for Dana Jarvis on his tax returns.  
10

11       David has no real equity, no significant unencumbered assets, and  
12 has tremendous debt.<sup>2</sup>  
13

14       David's acceptance of responsibility and entry into this plea  
15 agreement has constituted a substantial savings of time and resources for  
16 both the Government and the Court. The Government and the Court did  
17 not have to go forward with litigating the *Franks* evidentiary hearing and did  
18 not face an additional hearing on the merits of the wiretap. Further, the trial  
19 was avoided as to the allegations against David (which had substantial  
20 areas that did not overlap with the sole remaining defendant herein).  
21

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22  
23       <sup>2</sup> Page 20 of the PSIR lists a 2007 Chevrolet pickup truck as being  
24 unencumbered. In fact it is the subject of the GMAC auto loan shown  
25 further down that same page. The truck is "upside down."

1           David also has a great deal of family and community support as  
2 reflected in a number of letters which have been submitted (several letters  
3 were submitted to the Court with the PSIR and an additional letter is  
4 attached to this pleading).

5           For all of the reasons recited herein the Court is urged to accept the  
6 plea agreement and to sentence David Reid to a period of probation.  
7 Several additional matters need to be discussed with regard to the nature  
8 of his probation and some of the other conditions thereof.

9           Given the fact that David has been under this Court's supervision for  
10 almost *five full years* without any issue or problem, the Court is respectfully  
11 urged to make the period of probation a short one. Further, the Court is  
12 asked to consider making the probation unsupervised. Given David's  
13 performance and the nature of this plea, there is frankly no need to waste  
14 already over-stressed probationary resources on an individual who has  
15 demonstrated he does not need supervision.

16           The Court is also urged to waive the payment of any probation fees  
17 given the very dire nature of David's financial condition and the fact that  
18 there is still a substantial amount owed on a fine. Those same financial  
19 circumstances also militate in favor of the Court waiving the requirement for  
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1 interest on the fine that has been imposed (particularly given the  
2 approximate \$8,500.00 payment that is to be credited at the time of  
3 sentencing).  
4

5 There are two potential conditions of probation shown in Attachment  
6 A to the Presentence Report that would be particularly inappropriate in the  
7 case of David Reid. The first is the condition that he not leave the District  
8 without prior permission. First David lives in Texas not New Mexico.  
9 Second, David works as a commercial pilot and frequently flies around the  
10 country, often times on short notice. Any requirement that does not allow  
11 him leave the judicial district in which he is being supervised without  
12 permission of the Court or his Probation Officer has proven unworkable in  
13 the past. Indeed, his Pretrial Services conditions were modified early on in  
14 this case to allow David to travel for purposes of employment without  
15 permission of the Court or Pretrial Services. No problems followed.  
16 Therefore, the Court is urged not to impose this as a condition of his  
17 probation.  
18

19 The second is the condition that he have no access to firearms.  
20 David presently resides with his fiancé on a ranch in Texas. Ranch style  
21 living in Texas (and in New Mexico and Arizona) is characterized by the  
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1 presence of firearms. In rural areas these are a necessity. His fiancé and  
2 her family have firearms. The charge of which David is now convicted  
3 does not operate as a bar to his right to possess firearms. His record is  
4 devoid of violence or firearms misconduct and the allegations in this case  
5 involving David are similarly violence-free. Therefore, the Court is  
6 respectfully urged not to impose any condition that bars David from  
7 possessing or having access to any firearms during his probationary  
8 period.

11 In conclusion, the Court is respectfully urged to accept the plea  
12 agreement, and impose the stipulated sentence. It is further requested  
13 that, in view of Mr. Reid's exemplary record during the many years that his  
14 case has been litigate, the conditions of probation be set as discussed  
15 above.

17 RESPECTFULLY SUBMITTED this 8<sup>th</sup> day of July, 2010.  
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LAW OFFICES OF  
NASH & KIRCHNER

BY: /s/ Walter Nash  
Attorney for Defendant Reid

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NASH & KIRCHNER, P.C.  
P.O. BOX 2310  
TUCSON, ARIZONA 85702  
Telephone (520) 792-1613

1 CERTIFICATE OF SERVICE  
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I hereby certify that a true and correct copy of the foregoing pleading  
was delivered to opposing counsel and all other counsel of record *via* the  
CM/ECF system this 8<sup>th</sup> day of July, 2010.

6  
7 /s/ Walter Nash  
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